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IN THE

Supreme Court of the United States

OCTOBER TERM, 1968

No. 713

VINCENT P. BRADY,

Respondent,

—against—

TRANS WORLD AIRLINES, INC.,

Petitioner,

~~and~~

~~THE INTERNATIONAL ASSOCIATION OF MACHINISTS.~~

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

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THE INTERNATIONAL ASSOCIATION OF MACHINISTS.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

Petitioner, Trans World Airlines, Inc. ("TWA"), prays that a writ of certiorari issue to the United States Court of Appeals for the Third Circuit to review its judgment in this case.

Opinions Below

The opinion of the Court of Appeals is not reported (Opinions 6a).[1] Of the opinions of the District Court de-

[1] References to "(Opinions .....)" are to the jointly-prepared Opinions Delivered in the Courts Below which are voluminous and are, therefore, being separately presented.

termining liability and relief, the opinion of November 4, 1963 is reported at 223 F. Supp. 361 (Opinions 88a), the opinion of September 3, 1965 is reported at 244 F. Supp. 820 (Opinions 106a) and the opinion of September 6, 1966 is unreported (Opinions 111a). Earlier opinions of the District Court are reported at 156 F. Supp. 82 (Opinions 43a), 167 F. Supp. 469 (Opinions 57a), 174 F. Supp. 360 (Opinions 67a) and 196 F. Supp. 504 (Opinions 81a); a letter opinion dated May 3, 1962 is unreported (Opinions 87a).

Jurisdiction

The judgment of the Court of Appeals, set forth in Appendix A, *infra,* was entered August 13, 1968. The jurisdiction of this Court is invoked under 28 U. S. C. §1254(1).

Questions Presented

1. Is a System Board of Adjustment established under the Railway Labor Act ousted from jurisdiction over an employee's grievance because the grievance involves a complaint of wrongful discharge pursuant to the union-security provisions of a collective bargaining agreement?

2. May an airline employee discharged pursuant to the union-security provisions of a collective bargaining agreement authorized by the Railway Labor Act obtain reinstatement in employment otherwise than under the administrative procedures established by such collective bargaining agreement?

3. May a federal court set aside a final and binding decision of a Railway Labor Act System Board of Adjustment upholding the discharge of an airline employee for failure to maintain membership in good standing in his union in the absence of any finding by the court that the System Board had denied the employee a fair hearing or otherwise acted improperly?

4. Does an airline automatically violate the Railway Labor Act when, pursuant to a lawful collective bargaining agreement and in good faith reliance on union certification, it complies with a Railway Labor Act System Board of Adjustment decision and discharges an employee for failure to maintain membership in good standing in his union if a court later determines that without the airline's knowledge the union had improperly rejected the employee's tender of his dues?

Statutes Involved

Relevant provisions of the Railway Labor Act, 44 Stat. 577, as amended, 45 U. S. C. §§151 *et seq.* ("the Act"), are set forth in Appendix B, *infra.*

Statement of the Case

The basic facts are not in dispute. TWA is an air carrier subject to Title II of the Act, 49 Stat. 1189, 45 U. S. C. §§181 *et seq.* Respondent, Vincent P. Brady ("Brady"), was, prior to his discharge on May 15, 1956, a mechanic employed by TWA at its Philadelphia station. At that time Brady was a shop steward and member of the

International Association of Machinists ("the IAM"), the certified collective bargaining agent for TWA's mechanics.

The collective bargaining agreement between TWA and the IAM ("the Agreement") contained a union-security provision requiring that employees maintain "membership in good standing" in the IAM by paying "dues for each calendar month not later than the last day of the following calendar month" (316a-317a).[2]

Brady's Refusal to Pay Dues

Protesting the propriety of a 25¢ a month increase in the IAM dues, Brady refused to pay his dues for December 1955 and January, February and March 1956.[3] As a result the IAM advised Brady on March 13, 1956 that he would be subject to discharge if he did not pay the dues for these four months, totaling $13, by March 28, 1956 (306a-307a). When Brady tendered only $10.50 on March 27, 1956, the IAM rejected the tender as insufficient and demanded that Brady pay a reinstatement fee of $25 by April 26, 1956 (340a-341a).[4]

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[2] References to "(.....a)" are to the pages of the Joint Appendix of TWA and IAM filed with the Court of Appeals and included in the record certified by the clerk of that Court being filed with this petition.

[3] Subsequently, Brady characterized his argument with the IAM as follows:

> "I believe you know that my argument in this case hasn't been the refusal to pay my dues, but what I considered to be the proper amount due to the events leading up to the raising the dues and actions on the lodge floor afterwards" (297a).

[4] TWA was not advised of Brady's tender.

The IAM Discharge Certification

Brady ignored the IAM demand. Anticipating that he would be certified for discharge, he appealed on April 24, 1956 to the System Board of Adjustment established by Article XXVI of the Agreement (267a-268a).[5] On April 30, 1956 the IAM certified to TWA that Brady had failed to make the necessary payment and should be discharged in accordance with the terms of the Agreement (301a).

The System Board Hearings

A hearing on Brady's appeal was held on May 4, 1956. Although he had notice, Brady failed to appear (21a, 286a). Since Brady's appeal of April 24 antedated the IAM discharge certification of April 30, the System Board concluded that Brady's appeal "was not properly before this Board" (270a, 358a).

The Vice Chairman and Chairman of the System Board telephoned Brady at the conclusion of the May 4 hearing to advise him of the Board's decision and to further advise him that an appeal of his discharge would be heard if Brady mailed a new appeal. This telephone conversation was confirmed by a special delivery letter (358a).

In accordance with a request by Brady a second hearing was held on May 14, 1956. Once again, despite notice, Brady failed to appear (21a, 287a).

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[5] The System Board of Adjustment was established under the Agreement pursuant to the statutory duty under Section 204 of the Railway Labor Act (49 Stat. 1189, 45 U. S. C. §184) "of establishing and utilizing system, group, or regional boards of adjustment for the purpose of adjusting and deciding disputes arising under existing contracts." *IAM* v. *Central Airlines, Inc.*, 372 U. S. 682, 686 (1963).

The full transcript of the second hearing is set forth in the Joint Appendix of TWA and IAM below (287a-305a). The undisputed evidence before the Board showed that the IAM had afforded Brady repeated opportunities to pay his union obligations but Brady had refused to make such payment. The record included a written admission by Brady that he was in default as follows:

> "This is to inform you that I am willing to make the payment of my dues, as I have demonstrated on a number of occasions in the past. I will pay the amount that the rest of the fellows are now paying dating back to December to the present time" (297a).

Based upon this undisputed evidence and Brady's admission, the System Board on May 14, 1956 held that Brady's discharge should be upheld (361a). Under the Agreement the decision of the System Board was "final and binding on all parties concerned" (320a).

The Holdings of the District Court

On April 22, 1957, Brady commenced the present action in the United States District Court for the District of Delaware. Jurisdiction was premised on 45 U. S. C. 181 and 152 and 28 U. S. C. 1331 and 1337. On November 4, 1963, the District Court held Brady "entitled to compensatory damages and reinstatement" (248a).[6] No issue was submitted by Brady at the trial and no evidence was offered as to any alleged fault of TWA or as to any alleged

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[6] *Brady* v. *Trans World Airlines, Inc.*, 223 F. Supp. 361, 370 (D. Del. 1963) (Opinions 88a, 105a). The District Court made no finding on Brady's basic contention that his discharge "was prompted by the Union's hostile discrimination against him". The record would not support a finding of hostile discrimination since only Brady refused to pay the increased dues (167a, 198a).

knowledge by TWA of the claimed wrongful acts of the IAM (121a-127a; 223a-227a).

Misreading the Agreement and the IAM Constitution,[7] the District Court held that the IAM's demand that Brady pay four months' dues by March 28, 1956, was excessive since, as the Court reasoned, Brady "owed only two months dues" (243a).

The District Court further held that Brady's tender on March 27, 1956 of $10.50 precluded his discharge, since under the District Court's reasoning only two months' dues totaling $6.50 was then due.

Since the Court had severed the trial of the liability issues from the damage questions, it dealt with the question of damages in a decision rendered September 3, 1965 (250a).[8]

After further hearings, the District Court on September 6, 1966, entered final judgment directing Brady's reinstatement in TWA's employ as well as restoration of his union membership and awarded him back pay of $10,617.80 (402a-403a). The Court further ordered that Brady be reinstated in TWA's retirement program by his contributing "the sum which he would have contributed over the period as well as having TWA contribute its share" (401a).

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[7] Under the IAM Constitution [Article E, Sec. 14 (329a)] delinquency for three months in the payment of dues automatically cancels membership. No grace period is provided. Hence Brady's membership was automatically cancelled on March 1, 1956 when he had failed to pay the prior three months' dues. The District Court would amend the IAM Constitution by adding a grace period. While TWA is not privy to the IAM Constitution, under either the Agreement or the Constitution Brady's union membership had terminated by March 1, 1956.

[8] *Brady* v. *Trans World Airlines, Inc.*, 244 F. Supp. 820 (D. Del. 1965) (Opinions 106a).

The Holding of the Court of Appeals

In affirming, the Court of Appeals held:

A. A Railway Labor Act System Board of Adjustment does not have jurisdiction over a union-security discharge case, since this is primarily a dispute between the employee and his bargaining agent rather than a dispute between the employee and his employer (Opinions 14a);

B. Brady was entitled to obtain reinstatement in this action and the relief of reinstatement is not limited to the administrative procedures established by the Agreement (Opinions 34a);

C. The District Court acted properly in ignoring the decision of the System Board of Adjustment upholding Brady's discharge, despite the absence of any finding by the Court that the System Board had denied Brady a fair hearing or otherwise acted improperly (Opinions 20a); and

D. TWA automatically violated the Railway Labor Act when, pursuant to a lawful collective bargaining agreement and in good faith reliance on union certification, TWA complied with the decision of the System Board and discharged Brady for failure to maintain membership in good standing in the IAM (Opinions 28a-32a).

Reasons for Granting the Writ

I.

This case raises an important question in the administration of Title II of the Railway Labor Act—the extent of the jurisdiction of an airline System Board of Adjustment in union-security disputes, a question which will affect the administration of every collective bargaining agreement in the airline industry containing a union-security clause. The decision below is in direct conflict with the holdings of this Court and the holdings of other circuits involving union-security discharges of railroad employees under Title I of the Act.

In holding that the TWA-IAM System Board had no jurisdiction over Brady's claim for wrongful discharge, the Court of Appeals has cast doubt on the jurisdiction of any System Board to resolve any union-security dispute. Every airline, every airline union and every airline employee has a vital interest in having this doubt resolved.

Section 204 of the Act (45 U. S. C. §184) requires carriers and unions subject to the Act to provide in their collective bargaining agreements for the creation of adjustment boards to resolve disputes not disposed of by grievance procedures. It is unquestioned that these adjustment boards have jurisdiction over wrongful discharge claims. Indeed, the submission of such grievances to an adjustment board "is not a matter of voluntary agreement"; the Act compels the parties to arbitrate such claims before adjustment boards. *Walker* v. *Southern Ry.*, 385 U. S. 196, 198 (1966).

The holding of the Court of Appeals below is contrary to the decisions of this Court and those of other circuits

holding that the National Railroad Adjustment Board established under Section 3 of the Act (45 U. S. C. §153) has exclusive primary jurisdiction to determine the validity of union-security discharges of railroad employees.[9]

In 1954 this Court in a *per curiam* opinion affirmed the holding of a three-judge court sitting in the Northern District of Illinois that a union-security discharge case "is a dispute within the meaning of Section 3, First (*l*), cognizable by the Board, and that the courts are without jurisdiction." *Johns* v. *Baltimore & Ohio R.R.*, 118 F. Supp. 317, 320 (N. D. Ill. 1954), *aff'd. per curiam*, 347 U. S. 964 (1954).

With one possible exception, there is uniform agreement among the circuits that the National Railroad Adjustment Board has exclusive primary jurisdiction in all union-security discharge cases. See, *e.g.*, *Battle* v. *Brotherhood of Ry. and S.S. Clerks*, 320 F. 2d 742 (D. C. Cir. 1963); *Alabaugh* v. *Baltimore & Ohio R.R.*, 222 F. 2d 861 (4th Cir.), *cert. denied*, 350 U. S. 839 (1955); *Pigott* v. *Detroit, T. & I. R.R.*, 221 F. 2d 736 (6th Cir. 1955); *United R.R. Operating Crafts* v. *Pennsylvania R.R.*, 212 F. 2d 938 (7th Cir. 1954); *United R.R. Operating Crafts* v. *Northern Pacific R.R.*, 208 F. 2d 135 (9th Cir. 1953), *cert. denied*, 347 U. S. 929 (1954); *United R.R. Operating Crafts* v. *Wyer*, 115 F. Supp. 359 (S. D. N. Y.), *aff'd.*, 205 F. 2d 153 (2nd Cir. 1953), *cert. denied*, 347 U. S. 929 (1954).

In *Wyer* Judge Conger dismissed an employee's complaint seeking to enjoin a railroad employer from honoring

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[9] The jurisdiction of the National Railroad Adjustment Board under Section 3 of the Act (45 U. S. C. §153) is comparable to the jurisdiction of the TWA-IAM System Board of Adjustment under Section 204 of the Act (45 U. S. C. §184).

a union-security discharge certification on the grounds that the Board's jurisdiction "is exclusive within the rule of the Pitney,[10] Slocum[11] and Southern R. Co.[12] cases". 115 F. Supp. at 365.

The Second Circuit is also in accord in the ordinary union-security discharge cases. In some cases, however, where bias or hostile discrimination on the part of the union was established—as is not the case here—this Circuit has permitted a review on the merits of an adjustment board decision or has denied adjustment board jurisdiction.[13] In *Rychlik* v. *Pennsylvania R.R.*, 229 F. 2d 171 (2nd

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[10] *Order of Ry. Conductors* v. *Pitney*, 326 U. S. 561 (1946).

[11] *Slocum* v. *Delaware, L. & W. R.R.*, 339 U. S. 239 (1950).

[12] *Order of Ry. Conductors* v. *Southern Ry.*, 339 U. S. 255 (1950).

[13] But even in such cases the decisions of the Second Circuit appear to be in conflict. See *Rychlik* v. *Pennsylvania R.R.*, 229 F. 2d 171 (2nd Cir. 1956), *rev'd on other grounds*, 352 U. S. 480 (1957) and *Cunningham* v. *Erie R.R.*, 266 F. 2d 411 (2nd Cir. 1959). But *cf. Thompson* v. *New York Cent. R.R.*, 361 F. 2d 137, 143 n. 7 (2nd Cir. 1966), where the Court said:

> "There is no doubt that individual employees, such as the plaintiffs here, whose interests vis-à-vis their employer are hostile to those of their union, have standing to present grievances to the Adjustment Board, irrespective of the union's position. The discussion to the contrary in Steele v. Louisville & Nashville R.R., 1944, 323 U. S. 192, 205-206, 65 S. Ct. 226, 89 L. Ed. 173, is no longer valid. See Elgin, Joliet & Eastern Ry. v. Burley, 1945, 325 U. S. 711, 731-738, 65 S. Ct. 1282, 89 L. Ed. 1886, aff'd on rehearing, 1946, 327 U. S. 661, 66 S. Ct. 721, 90 L. Ed. 928; Conley v. Gibson, 1957, 355 U. S. 41, 47, 78 S. Ct. 99, 2 L. Ed. 2d 80. See also Starke v. New York C. & St. L. R.R., 7 Cir., 1950, 180 F. 2d 569, 573; Spires v. Southern Ry., 4 Cir., 1953, 204 F. 2d 453; Colbert v. Brotherhood of R.R. Trainmen, 9 Cir., 1953, 206 F. 2d 9, 12, cert. denied, 1954, 346 U. S. 931, 74 S. Ct. 320; Gainey v. Brotherhood of Railway, etc., Clerks, 3 Cir., 1960, 275 F. 2d 342."

Cir. 1956) the Second Circuit held that a Railroad System Board of Adjustment established pursuant to Section 3, Second of the Act, had jurisdiction over the union-security dispute between Rychlik and the Brotherhood of Railroad Trainmen. However, it further held that this jurisdiction was subject to full review on the merits, because of the bias which must be attributed to a body half of whose members represented the Brotherhood of Railroad Trainmen. Because of conflict between the Second and Sixth Circuits[14] and the importance of these questions in the administration of the Railway Labor Act, this Court granted certiorari. 351 U. S. 930 (1956). But, in its opinion reversing the Second Circuit on other grounds this Court did not reach the question of the extent of the review to be accorded the proceedings before the System Board of Adjustment. 352 U. S. at 489 (1957).[15]

In *Cunningham* v. *Erie R.R.*, 266 F. 2d 411 (2nd Cir. 1959), it was held that an adjustment board did not have jurisdiction of a railroad employee's claim that his union-security discharge was the result of "hostile discrimination". However, even in this case the court was careful to point out that

> "... in order to establish a breach by the union of its duty to represent the employees fairly, as the bargain-

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[14] *Pigott* v. *Detroit, T. & I. R.R.*, 221 F. 2d 736 (6th Cir. 1955).

[15] In concurring Mr. Justice Frankfurter said "The determination of the System Board on the merits is not open to judicial review, even on so-called legal questions. It is not for a court to say that a complaint against the System Board must fail because the System Board rightly held against the complainant. Right or wrong, a court has no jurisdiction to review what the System Board did, unless a complainant asserts arbitrariness and seeks to enforce the limited protection established in the *Steele* case." 352 U. S. at 499.

> ing representative of the employees sanctioned by statute, it is not enough to prove that the union was wrong in demanding Cunningham's dismissal. This duty was no more than to forbear 'hostile discrimination.' The arbitrariness must be of the bad faith kind. As Justice Stone suggested in Steele [v. Louisville & Nashville R.R.], 323 U. S. at page 203, 65 S. Ct. 226, it is not violative of federal law that the union not satisfy all employees or that it improperly balance the rights and obligations of the various groups it represents. Something akin to factual malice is necessary. While the union may fail to strike a balance in the most equitable fashion possible it at least must try." 266 F. 2d at 417.

Here, however, the Court of Appeals has rejected the qualification stated in *Cunningham* by denying the jurisdiction of the System Board of Adjustment although there was no finding of hostile discrimination. The holding of the Court of Appeals is, therefore, in conflict with the decisions of six other circuits as well as the decisions of this Court.

If the Court of Appeals is correct here, then every collective bargaining agreement in the airline industry containing a union-security provision—a majority of such agreements—must be rewritten. No employee who claims to have been wrongfully discharged under such a provision can resort to a System Board for prompt determination of his claim but will be required to resort to litigation.[16]

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[16] The burden on the employee, the union and the employer of such a requirement is obvious from this case, involving a dispute over a discharge in May 1956, and from *Cunningham*, in which the Second Circuit finally decided in March 1966 a dispute over a discharge in February 1955. *Cunningham* v. *Erie R.R.*, 358 F. 2d

Moreover, the Court of Appeals in holding the System Board without jurisdiction over a union-security discharge has considered only the circumstance in which the carrier has complied with the union's discharge certification. It has failed to consider the other side of the coin, the circumstance in which the carrier refuses to comply. What forum has jurisdiction to determine that controversy?

Is such a controversy properly before a System Board because it is a dispute between the employer and the union? If so, this would enable the employer to determine that the System Board has jurisdiction in every case simply by initially rejecting the union certification.

Or, does the System Board entirely lack jurisdiction of such a dispute? If this is the case the union may claim it is free to strike to enforce the union-security provisions of the collective bargaining agreement since the dispute is outside the administrative procedures of the Act.

It is respectfully submitted that the confusion which must result from this decision will inevitably disturb orderly labor-management relations in the airline industry and disrupt interstate commerce thereby frustrating the primary purpose of Section 2 of the Act (45 U. S. C. §151a) to "avoid any interruption to commerce or the operation of any carrier engaged therein". No purpose of the Railway Labor Act is served by denying System Boards jurisdiction over union-security discharges. The important questions which this decision has raised but not resolved should be settled by this Court.

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640 (2nd Cir. 1966). In contrast, System Board hearings under Title II of the Act are held promptly and there is no backlog of cases. Brady's System Board hearing took place within two weeks of the union discharge certification.

II.

This case also raises another important question of federal law which the Court of Appeals has decided in conflict with applicable decisions of this Court. The Court of Appeals has affirmed the jurisdiction of the District Court to order Brady's reinstatement. But federal substantive law provides that a discharged airline employee may seek reinstatement only by processing his grievance through a System Board of Adjustment. If he sues for unlawful discharge the employee is limited to an award of money damages only.

In an unbroken line of cases commencing in 1941 and continuing through its most recent decision of December 5, 1966, this Court has repeatedly held that an employee subject to the Railway Labor Act has two remedies when he claims an unlawful discharge. He may seek reinstatement and back pay by appealing his discharge to the applicable Adjustment Board. Or, *if he decides to treat his contract of employment as at an end,* he may sue, where permitted by State law, for money damages based on unlawful discharge. *Moore* v. *Illinois Central R.R.*, 312 U. S. 630 (1941); *Slocum* v. *Delaware, L. & W. R.R.*, 339 U. S. 239, 244 (1950); *Transcontinental & Western Air, Inc.* v. *Koppal*, 345 U. S. 653 (1953); *Walker* v. *Southern Ry.*, 385 U. S. 196 (1966).[17]

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[17] In allowing such State court actions for money damages this Court has held that the appropriate Adjustment Board continues to have exclusive jurisdiction over the interpretation of collective bargaining agreements under the Act stating:

> "A common-law or statutory action for wrongful discharge differs from any remedy which the Board has power to provide, and does not involve questions of future relations between the railroad and its other employees. If a court in handling

In *Walker,* this Court outlined the available remedies as follows:

> " . . . a discharged railroad employee aggrieved by the discharge may either (1) pursue his remedy under the administrative procedures established by an applicable collective bargaining agreement subject to the Railway Labor Act, and his right of review before the National Railway Adjustment Board, or (2) if he accepts his discharge as final, he may bring an action at law in an appropriate State court for money damages if the State courts recognize such a claim." 385 U. S. at 196.

Under each of these prior decisions of this Court, an appeal to the System Board of Adjustment was the exclusive means by which Brady could have obtained reinstatement.

> "A contrary rule which would permit an individual employee to completely sidestep available grievance procedures in favor of a lawsuit has little to commend it. In addition to cutting across the interests already mentioned, it would deprive employer and union of the ability to establish a uniform and exclusive method for

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such a case must consider some provision of a collective-bargaining agreement, its interpretation would of course have no binding effect on future interpretations by the Board." *Slocum* v. *Delaware, L. & W. R.R. Co.,* 339 U. S. 239, 244 (1950).

Whether, since *IAM* v. *Central Airlines, Inc.,* 372 U. S. 682 (1963) this Court will continue to permit such State court actions for money damages to be maintained would appear an open question. Mr. Justice Harlan, joined by Justices Stewart and White in dissenting in *Walker* v. *Southern Ry.,* 385 U. S. 196, 199 (1966), suggests that since federal substantive law now controls the employee-employer relationship under the Act such State court actions should no longer be permitted.

> orderly settlement of employee grievances. If a grievance procedure cannot be made exclusive, it loses much of its desirability as a method of settlement. A rule creating such a situation 'would inevitably exert a disruptive influence upon both the negotiation and administration of collective agreements.' *Teamsters Local* v. *Lucas Flour Co.*, 369 U. S. 95, 103." *Republic Steel Corp.* v. *Maddox*, 379 U. S. 650, 653 (1965).

The present decision is without judicial precedent. In no case since Title II of the Railway Labor Act was adopted in 1936 has an airline employee secured reinstatement by ignoring the administrative procedures of his collective bargaining agreement and instead suing for wrongful discharge in the courts. This is not an appropriate case to make an exception to the federal labor policy enunciated by Congress in the Railway Labor Act and sustained in an unbroken line of decisions of this Court.

III.

This case raises a third important question of federal law which has not been, but should be, settled by this Court—the question of whether an employer "automatically" violates the Act when in good faith reliance on union certification it complies with a System Board decision upholding the discharge of an employee for failure to maintain membership in good standing in his union, if a court later determines that *without the employer's knowledge* the union had improperly certified the employee's discharge.

There is no provision for "automatic" liability under the Act. Nor does the legislative history of Section 2, Eleventh, providing for union-security agreements, indi-

cate that Congress intended railroad and airline employers to be "automatically" liable for union dereliction under the Railway Labor Act, while absolving all other employers from such liability under Section 8(a)(3) of the Labor Management Relations Act.[18] In fact, that legislative history makes it clear that the union-security provisions of the two Acts are substantially the same. In its report when Section 2, Eleventh was added to the Railway Labor Act in 1951, the Senate Committee stated that the terms of Section 2, Eleventh "are substantially the same as those of the Labor-Management Relations Act as they have been administered. . . ." (1950 U. S. Code Cong. Serv. 4321).

Federal substantive law is here applicable. *IAM* v. *Central Airlines, Inc.*, 372 U. S. 682, 691 (1963). And this Court has made it clear that the liability of the employer for damages in cases such as this rests on an entirely different basis from that of the union. *Vaca* v. *Sipes*, 386 U. S. 171 (1967). As stated by Mr. Justice Goldberg, concurring in *Humphrey* v. *Moore*, 375 U. S. 335, 356 (1964), "the [employee's] remedy in a suit based upon a breach of the union's duty of fair representation" may be enforced against the employer only "under appropriate

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[18] 61 Stat. 140, as amended by 73 Stat. 525, 29 U. S. C. §158(a)(3). It is only where the employer "has reasonable grounds for believing that [union] membership was denied or terminated for reasons other than the failure of the employee to tender the periodic dues and the initiation fees uniformly required as a condition of acquiring or retaining membership" that an employer is liable for union dereliction in LMRA cases. *NLRB* v. *Leece-Neville Co.*, 330 F. 2d 242 (6th Cir.), *cert. denied*, 379 U. S. 819 (1964); *Producers Transport, Inc.* v. *NLRB*, 284 F. 2d 438, 443 (7th Cir. 1960); *NLRB* v. *Pape Broadcasting Co.*, 217 F. 2d 197 (5th Cir. 1954); *Krambo Food Stores, Inc.*, 114 N. L. R. B. 241, 244 (1955), *aff'd sub nom. NLRB* v. *Allied Independent Union*, 238 F. 2d 120 (7th Cir. 1956).

circumstances" such as where "the employer willfully participated in the union's breach of its duty of fair representation".

The decision below is in direct conflict with the legislative history of the Railway Labor Act and represents a significant departure from the approach of this Court in employee-union-employer litigation. A prompt and authoritative answer is necessary in view of the fundamental character of this question under the Act.

CONCLUSION

For the reasons stated, the writ should be granted.

Respectfully submitted,

HAROLD L. WARNER, JR.
Counsel for Petitioner

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CHADBOURNE, PARKE, WHITESIDE & WOLFF
New York, New York
Of Counsel

Dated: November 4, 1968

Certificate of Service

I, HAROLD L. WARNER, JR., hereby certify that:

1. I am a member of the Bar of this Court.

2. I have this day served the attached Petition for a Writ of Certiorari to the United States Court of Appeals for the Third Circuit by depositing true copies thereof in a Letter Box maintained and exclusively controlled by the United States at 25 Broadway, New York, New York 10004, with first class postage prepaid, addressed to the following counsel of record in this action at the addresses designated by them, as follows:

Francis L. White, Jr., Esq.
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Bruce M. Stargatt, Esq.
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HAROLD L. WARNER, JR.

November 4, 1968

APPENDIX A

Judgment Sought to Be Reviewed

UNITED STATES COURT OF APPEALS

FOR THE THIRD CIRCUIT

No. 16,267

VINCENT P. BRADY,

vs.

TRANS WORLD AIRLINES, INC., a corporation of the State of Delaware,

and

THE INTERNATIONAL ASSOCIATION OF MACHINISTS, an unincorporated association,

TRANS WORLD AIRLINES, INC.,

Appellant.

(D. C. Civil Action No. 1884)

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE ——— DISTRICT OF DELAWARE

Present:

HASTIE, *Chief Judge*, and
McLAUGHLIN and FORMAN, *Circuit Judges*.

APPENDICES

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ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE —— DISTRICT OF DELAWARE

Present:

HASTIE, *Chief Judge,* and
McLAUGHLIN and FORMAN, *Circuit Judges.*

JUDGMENT

This cause came on to be heard on the record from the United States District Court for the —— District of Delaware and was argued by counsel.

On consideration whereof, it is now here ordered and adjudged by this Court that the judgment of the said District Court, filed September 6, 1966, be, and the same is hereby affirmed. Each of the parties to this appeal will bear his own costs.

ATTEST:

THOMAS F. QUINN
Clerk

August 13, 1968

APPENDIX B

Statutes Involved

The following is the text of Sections 2, First, Fourth, Fifth and Eleventh, 3, 201 and 204 of the Railway Labor Act (49 U.S.C. §§ 151a, 152, First, Fourth, Fifth and Eleventh, 153, 181 and 184):

SEC. 2. [*44 Stat. 577, as amended by 48 Stat. 1186, 62 Stat. 909, 64 Stat. 1238, 45 U.S.C. 151a, 152*] The purposes of the Act are: (1) To avoid any interruption to commerce or to the operation of any carrier engaged therein; (2) to forbid any limitation upon freedom of association among employees or any denial, as a condition of employment or otherwise, of the right of employees to join a labor organization; (3) to provide for the complete independence of carriers and of employees in the matter of self-organization to carry out the purposes of this Act; (4) to provide for the prompt and orderly settlement of all disputes concerning rates of pay, rules, or working conditions; (5) to provide for the prompt and orderly settlement of all disputes growing out of grievances or out of the interpretations or application of agreements covering rates of pay, rules, or working conditions.

First. It shall be the duty of all carriers, their officers, agents, and employees to exert every reasonable effort to make and maintain agreements concerning rates of pay, rules, and working conditions, and to settle all disputes, whether arising out of the application of such agreements or otherwise, in order to avoid any interruption to commerce or to the operation of any carrier growing out of any dispute between the carrier and the employees thereof.

• • • • •

Fourth. Employees shall have the right to organize and bargain collectively through representatives of their own choosing. The majority of any craft or class of employees shall have the right to determine who shall be the representative of the craft or class for the purposes of this Act. No carrier, its officers or agents, shall deny or in any way question the right of its employees to join, organize, or assist in organizing the labor organization of their choice, and it shall be unlawful for any carrier to interfere in any way with the organization of its employees, or to use the funds of the carrier in maintaining or assisting or contributing to any labor organization, labor representative, or other agency of collective bargaining, or in performing any work therefor, or to influence or coerce employees in an effort to induce them to join or remain or not to join or remain members of any labor organization, or to deduct from the wages of employees any dues, fees, assessments, or other contributions payable to labor organizations, or to collect or to assist in the collection of any such dues, fees, assessments, or other contributions: *Provided,* That nothing in this Act shall be construed to prohibit a carrier from permitting an employee, individually, or local representatives of employees from conferring with management during working hours without loss of time, or to prohibit a carrier from furnishing free transportation to its employees while engaged in the business of a labor organization.

Fifth. No carrier, its officers, or agents shall require any person seeking employment to sign any contract or agreement promising to join or not to join a labor organization; and if any such contract has been enforced prior to the effective date of this Act, then such carrier shall notify

the employees by an appropriate order that such contract has been discarded and is no longer binding on them in any way.

• • • • •

Eleventh. [*45 U. S. C. § 152 as added by Act of January 10, 1951, 64 Stat. 1238*] Notwithstanding any other provisions of this Act, or of any other statute or law of the United States, or Territory thereof, or of any State, any carrier or carriers as defined in this Act and a labor organization or labor organizations duly designated and authorized to represent employees in accordance with the requirements of this Act shall be permitted—

(a) to make agreements, requiring, as a condition of continued employment, that within sixty days following the beginning of such employment, or the effective date of such agreements, whichever is the later, all employees shall become members of the labor organization representing their craft or class: *Provided,* That no such agreement shall require such condition of employment with respect to employees to whom membership is not available upon the same terms and conditions as are generally applicable to any other member or with respect to employees to whom membership was denied or terminated for any reason other than the failure of the employee to tender the periodic dues, initiation fees, and assessments (not including fines and penalties) uniformly required as a condition of acquiring or retaining membership.

(b) to make agreements providing for the deduction by such carrier or carriers from the wages of its or their employees in a craft or class and payment to the labor organization representing the craft or class of such employees, of

any periodic dues, initiation fees, and assessments (not including fines and penalties) uniformly required as a condition of acquiring or retaining membership: *Provided,* That no such agreement shall be effective with respect to any individual employee until he shall have furnished the employer with a written assignment to the labor organization of such membership dues, initiation fees, and assessments, which shall be revocable in writing after the expiration of one year or upon the termination date of the applicable collective agreement, whichever occurs sooner.

(c) The requirement of membership in a labor organization in an agreement made pursuant to subparagraph (a) shall be satisfied, as to both a present or future employee in engine, train, yard, or hostling service, that is, an employee engaged in any of the services or capacities covered in section 3, First (h) of this Act defining the jurisdictional scope of the First Division of the National Railroad Adjustment Board, if said employee shall hold or acquire membership in any one of the labor organizations, national in scope, organized in accordance with this Act and admitting to membership employees of a craft or class in any of said services; and no agreement made pursuant to subparagraph (b) shall provide for deductions from his wages for periodic dues, initiation fees, or assessments payable to any labor organization other than that in which he holds membership: *Provided, however,* That as to an employee in any of said services on a particular carrier at the effective date of any such agreement on a carrier, who is not a member of any one of the labor organizations, national in scope, organized in accordance with this Act and admitting to membership employees of a craft or class in any of said services, such employee, as a condition of continuing his

employment, may be required to become a member of the organization representing the craft in which he is employed on the effective date of the first agreement applicable to him: *Provided, further,* That nothing herein or in any such agreement or agreements shall prevent an employee from changing membership from one organization to another organization admitting to membership employees of a craft or class in any of said services.

(d) Any provisions in paragraphs Fourth and Fifth of section 2 of this Act in conflict herewith are to the extent of such conflict amended.

SEC. 3. [*44 Stat. 578, as amended by 48 Stat. 1189, 80 Stat. 208, 45 U.S.C. 153*] First. There is hereby established a Board, to be known as the "National Railroad Adjustment Board", the members of which shall be selected within thirty days after approval of this Act, and it is hereby provided—

(a) That the said Adjustment Board shall consist of thirty-six members, eighteen of whom shall be selected by the carriers and eighteen by such labor organizations of the employees, national in scope, as have been or may be organized in accordance with the provisions of section 2 of this Act.

(b) The carriers, acting each through its board of directors or its receiver or receivers, trustee or trustees, or through an officer or officers designated for that purpose by such board, trustee or trustees, or receiver or receivers, shall prescribe the rules under which its representatives shall be selected and shall select the representatives of the carriers on the Adjustment Board and designate the divi-

sion on which each such representative shall serve, but no carrier or system of carriers shall have more than one representative on any division of the Board.

(c) The national labor organizations as defined in paragraph (a) of this section, acting each through the chief executive or other medium designated by the organization or association thereof, shall prescribe the rules under which the labor members of the Adjustment Board shall be selected and shall select such members and designate the division on which each member shall serve; but no labor organization shall have more than one representative on any division of the Board.

(d) In case of a permanent or temporary vacancy on the Adjustment Board, the vacancy shall be filled by selection in the same manner as in the original selection.

(e) If either the carriers or the labor organizations of the employees fail to select and designate representatives to the Adjustment Board, as provided in paragraphs (b) and (c) of this section, respectively, within sixty days after the passage of this Act, in case of any original appointment to office of a member of the Adjustment Board, or in a case of a vacancy in any such office within thirty days after such vacancy occurs, the Mediation Board shall thereupon directly make the appointment and shall select an individual associated in interest with the carriers or the group of labor organizations of employees, whichever he is to represent.

(f) In the event a dispute arises as to the right of any national labor organization to participate as per paragraph (c) of this section in the selection and designation of the labor members of the Adjustment Board, the Secretary of

Labor shall investigate the claim of such labor organization to participate, and if such claim in the judgment of the Secretary of Labor has merit, the Secretary shall notify the Mediation Board accordingly, and within ten days after receipt of such advice the Mediation Board shall request those national labor organizations duly qualified as per paragraph (c) of this section to participate in the selection and designation of the labor members of the Adjustment Board to select a representative. Such representative, together with a representative likewise designated by the claimant, and a third or neutral party designated by the Mediation Board, constituting a board of three, shall within thirty days after the appointment of the neutral member, investigate the claims of the labor organization desiring participation and decide whether or not it was organized in accordance with section 2 hereof and is otherwise properly qualified to participate in the selection of the labor members of the Adjustment Board, and the findings of such boards of three shall be final and binding.

(g) Each member of the Adjustment Board shall be compensated by the party or parties he is to represent. Each third or neutral party selected under the provisions of (f) of this section shall receive from the Mediation Board such compensation as the Mediation Board may fix, together with his necessary traveling expenses and expenses actually incurred for subsistence, or per diem allowance in lieu thereof, subject to the provisions of law applicable thereto, while serving as such third or neutral party.

(h) The said Adjustment Board shall be composed of four divisions, whose proceedings shall be independent of one another, and the said divisions as well as the number of their members shall be as follows:

First division: To have jurisdiction over disputes involving train- and yard-service employees of carriers; that is, engineers, firemen, hostlers, and outside hostler helpers, conductors, trainmen, and yard-service employees. This division shall consist of ten members, five of whom shall be selected and designated by the carriers and five of whom shall be selected and designated by the national labor organizations of the employees.

Second division: To have jurisdiction over disputes involving machinists, boilermakers, blacksmiths, sheet-metal workers, electrical workers, car men, the helpers and apprentices of all the foregoing, coach cleaners, powerhouse employees, and railroad-shop laborers. This division shall consist of ten members, five of whom shall be selected by the carriers and five by the national labor organizations of the employees.

Third division: To have jurisdiction over disputes involving station, tower, and telegraph employees, train dispatchers, maintenance-of-way men, clerical employees, freight handlers, express, station, and store employees, signalmen, sleeping-car conductors, sleeping-car porters, and maids and dining car employees. This division shall consist of ten members, five of whom shall be selected by the carriers and five by the national labor organizations of employees.

Fourth division: To have jurisdiction over disputes involving employees of carriers directly or indirectly engaged in transportation of passengers or property by water, and all other employees of carriers over which jurisdiction is not given to the first, second, and third divisions.

This division shall consist of six members, three of whom shall be selected by the carriers and three by the national labor organizations of the employees.

(i) The disputes between an employee or group of employees and a carrier or carriers growing out of grievances or out of the interpretation or application of agreements concerning rates of pay, rules, or working conditions, including cases pending and unadjusted on the date of approval of this Act, shall be handled in the usual manner up to and including the chief operating officer of the carrier designated to handle such disputes; but, failing to reach an adjustment in this manner, the disputes may be referred by petition of the parties or by either party to the appropriate division of the Adjustment Board with a full statement of the facts and all supporting data bearing upon the disputes.

(j) Parties may be heard either in person, by counsel, or by other representatives, as they may respectively elect, and the several divisions of the Adjustment Board shall give due notice of all hearings to the employee or employees and the carrier or carriers involved in any disputes submitted to them.

(k) Any division of the Adjustment Board shall have authority to empower two or more of its members to conduct hearings and make findings upon disputes, when properly submitted, at any place designated by the division: *Provided, however,* That final awards as to any such dispute must be made by the entire division as hereinafter provided.

(l) Upon failure of any division to agree upon an award because of a deadlock or inability to secure a majority vote

of the division members, as provided in paragraph (n) of this section, then such division shall forthwith agree upon and select a neutral person, to be known as "referee", to sit with the division as a member thereof and make an award. Should the division fail to agree upon and select a referee within ten days of the date of the deadlock or inability to secure a majority vote, then the division, or any member thereof, or the parties or either party to the dispute may certify that fact to the Mediation Board, which Board shall, within ten days from the date of receiving such certificate, select and name the referee to sit with the division as a member thereof and make an award. The Mediation Board shall be bound by the same provisions in the appointment of these neutral referees as are provided elsewhere in this Act for the appointment of arbitrators and shall fix and pay the compensation of such referees.

(m) The awards of the several divisions of the Adjustment Board shall be stated in writing. A copy of the awards shall be furnished to the respective parties to the controversy, and the awards shall be final and binding upon both parties to the dispute. In case a dispute arises involving an interpretation of the award the division of the Board upon request of either party shall interpret the award in the light of the dispute.

(n) A majority vote of all members of the division of the Adjustment Board shall be competent to make an award with respect to any dispute submitted to it.

(o) In case of an award by any division of the Adjustment Board in favor of petitioner, the division of the Board shall make an order, directed to the carrier, to make the award effective and, if the award includes a requirement

for the payment of money, to pay to the employee the sum to which he is entitled under the award on or before a day named. In the event any division determines that an award favorable to the petitioner should not be made in any dispute referred to it, the division shall make an order to the petitioner stating such determination.

(p) If a carrier does not comply with an order of a division of the Adjustment Board within the time limit in such order, the petitioner, or any person for whose benefit such order was made, may file in the District Court of the United States for the district in which he resides or in which is located the principal operating office of the carrier, or through which the carrier operates, a petition setting forth briefly the causes for which he claims relief, and the order of the division of the Adjustment Board in the premises. Such suit in the District Court of the United States shall proceed in all respects as other civil suits, except that on the trial of such suit the findings and order of the division of the Adjustment Board shall be conclusive on the parties, and except that the petitioner shall not be liable for costs in the district court nor for costs at any subsequent stage of the proceedings, unless they accrue upon his appeal, and such costs shall be paid out of the appropriation for the expenses of the courts of the United States. If the petitioner shall finally prevail he shall be allowed a reasonable attorney's fee, to be taxed and collected as a part of the costs of the suit. The district courts are empowered, under the rules of the court governing actions at law, to make such order and enter such judgment, by writ of mandamus or otherwise, as may be appropriate to enforce or set aside the order of the decision of the Adjustment Board: *Provided, however,* That such order may not be set aside ex-

cept for failure of the division to comply with the requirements of this chapter, for failure of the order to conform, or confine itself, to matters within the scope of the division's jurisdiction, or for fraud or corruption by a member of the division making the order.

(q) If any employee or group of employees, or any carrier, is aggrieved by the failure of any division of the Adjustment Board to make an award in a dispute referred to it, or is aggrieved by any of the terms of an award or by the failure of the division to include certain terms in such award, then such employee or group of employees or carrier may file in any United States district court in which a petition under paragraph (p) could be filed, a petition for review of the division's order. A copy of the petition shall be forthwith transmitted by the clerk of the court to the Adjustment Board. The Adjustment Board shall file in the court the record of the proceedings on which it based its action. The court shall have jurisdiction to affirm the order of the division or to set it aside, in whole or in part, or it may remand the proceeding to the division for such further action as it may direct. On such review, the findings and order of the division shall be conclusive on the parties, except that the order of the division may be set aside, in whole or in part, or remanded to the division, for failure of the division to comply with the requirements of this chapter, for failure of the order to conform, or confine itself, to matters within the scope of the division's jurisdiction, or for fraud or corruption by a member of the division making the order. The judgment of the court shall be subject to review as provided in sections 1291 and 1254 of Title 28.

(r) All actions at law based upon the provisions of this section shall be begun within two years from the time the cause of action accrues under the award of the division of the Adjustment Board, and not after.

(s) The several divisions of the Adjustment Board shall maintain headquarters in Chicago, Illinois, meet regularly, and continue in session so long as there is pending before the division any matter within its jurisdiction which has been submitted for its consideration and which has not been disposed of.

(t) Whenever practicable, the several divisions or subdivisions of the Adjustment Board shall be supplied with suitable quarters in any Federal building located at its place of meeting.

(u) The Adjustment Board may, subject to the approval of the Mediation Board, employ and fix the compensations of such assistants as it deems necessary in carrying on its proceedings. The compensation of such employees shall be paid by the Mediation Board.

(v) The Adjustment Board shall meet within forty days after the approval of this Act and adopt such rules as it deems necessary to control proceedings before the respective divisions and not in conflict with the provisions of this section. Immediately following the meeting of the entire Board and the adoption of such rules, the respective divisions shall meet and organize by the selection of a chairman, a vice chairman, and a secretary. Thereafter each division shall annually designate one of its members to act as chairman and one of its members to act as vice chairman: *Provided, however,* That the chairmanship and vice chairmanship of any division shall alternate as

between the groups, so that both the chairmanship and vice chairmanship shall be held alternately by a representative of the carriers and a representative of the employees. In case of a vacancy, such vacancy shall be filled for the unexpired term by the selection of a successor from the same group.

(w) Each division of the Adjustment Board shall annually prepare and submit a report of its activities to the Mediation Board, and the substance of such report shall be included in the annual report of the Mediation Board to the Congress of the United States. The reports of each division of the Adjustment Board and the annual report of the Mediation Board shall state in detail all cases heard, all actions taken, the names, salaries, and duties of all agencies, employees, and officers receiving compensation from the United States under the authority of this Act, and an account of all moneys appropriated by Congress pursuant to the authority conferred by this Act and disbursed by such agencies, employees, and officers.

(x) Any division of the Adjustment Board shall have authority, in its discretion, to establish regional adjustment boards to act in its place and stead for such limited period as such division may determine to be necessary. Carrier members of such regional boards shall be designated in keeping with rules devised for this purpose by the carrier members of the Adjustment Board and the labor members shall be designated in keeping with rules devised for this purpose by the labor members of the Adjustment Board. Any such regional board shall, during the time for which it is appointed, have the same authority to conduct hearings, make findings upon disputes, and adopt the same procedure as the division of the Adjust-

ment Board appointing it, and its decisions shall be enforceable to the same extent and under the same processes. A neutral person, as referee, shall be appointed for service in connection with any such regional adjustment board in the same circumstances and manner as provided in paragraph (l) hereof, with respect to a division of the Adjustment Board.

Second. Nothing in this section shall be construed to prevent any individual carrier, system, or group of carriers and any class or classes of its or their employees, all acting through their representatives, selected in accordance with the provisions of this Act, from mutually agreeing to the establishment of system, group, or regional boards of adjustment for the purpose of adjusting and deciding disputes of the character specified in this section. In the event that either party to such a system, group, or regional board of adjustment is dissatisfied with such arrangement, it may upon ninety days' notice to the other party elect to come under the jurisdiction of the Adjustment Board.

If written request is made upon any individual carrier by the representative of any craft or class of employees of such carrier for the establishment of a special board of adjustment to resolve disputes otherwise referable to the Adjustment Board, or any dispute which has been pending before the Adjustment Board for twelve months from the date the dispute (claim) is received by the Board, or if any carrier makes such a request upon any such representative, the carrier or the representative upon whom such request is made shall join in an agreement establishing such a board within thirty days from the date such request is made. The cases which may be considered by such board

shall be defined in the agreement establishing it. Such board shall consist of one person designated by the carrier and one person designated by the representative of the employees. If such carrier or such representative fails to agree upon the establishment of such a board as provided herein, or to exercise its rights to designate a member of the board, the carrier or representative making the request for the establishment of the special board may request the Mediation Board to designate a member of the special board on behalf of the carrier or representative upon whom such request was made. Upon receipt of a request for such designation the Mediation Board shall promptly make such designation and shall select an individual associated in interest with the carrier or representative he is to represent, who, with the member appointed by the carrier or representative requesting the establishment of the special board, shall constitute the board. Each member of the board shall be compensated by the party he is to represent. The members of the board so designated shall determine all matters not previously agreed upon by the carrier and the representative of the employees with respect to the establishment and jurisdiction of the board. If they are unable to agree such matters shall be determined by a neutral member of the board selected or appointed and compensated in the same manner as is hereinafter provided with respect to situations where the members of the board are unable to agree upon an award. Such neutral member shall cease to be a member of the board when he has determined such matters. If with respect to any dispute or group of disputes the members of the board designated by the carrier and the representative are unable to agree upon an award disposing of the dispute

or group of disputes they shall by mutual agreement select a neutral person to be a member of the board for the consideration and disposition of such dispute or group of disputes. In the event the members of the board designated by the parties are unable, within ten days after their failure to agree upon an award, to agree upon the selection of such neutral person, either member of the board may request the Mediation Board to appoint such neutral person and upon receipt of such request the Mediation Board shall promptly make such appointment. The neutral person so selected or appointed shall be compensated and reimbursed for expenses by the Mediation Board. Any two members of the board shall be competent to render an award. Such awards shall be final and binding upon both parties to the dispute and if in favor of the petitioner, shall direct the other party to comply therewith on or before the day named. Compliance with such awards shall be enforcible by proceedings in the United States district courts in the same manner and subject to the same provisions that apply to proceedings for enforcement of compliance with awards of the Adjustment Board.

SEC. 201. [*Added by 49 Stat. 1189, 45 U. S. C. 181*] All of the provisions of title I of this Act, except the provisions of section 3 thereof, are extended to and shall cover every common carrier by air engaged in interstate or foreign commerce, and every carrier by air transporting mail for or under contract with the United States Government, and every air pilot or other person who performs any work as an employee or subordinate official of such carrier or carriers, subject to its or their continuing authority to supervise and direct the manner of rendition of his service.

SEC. 204. [*Added by 49 Stat. 1189, 45 U. S. C. 184*] The disputes between an employee or group of employees and a carrier or carriers by air growing out of grievances, or out of the interpretation or application of agreements concerning rates of pay, rules, or working conditions, including cases pending and unadjusted on the date of approval of this Act before the National Labor Relations Board, shall be handled in the usual manner up to and including the chief operating officer of the carrier designated to handle such disputes; but, failing to reach an adjustment in this manner, the disputes may be referred by petition of the parties or by either party to an appropriate adjustment board, as hereinafter provided, with a full statement of the facts and supporting data bearing upon the disputes.

It shall be the duty of every carrier and of its employees, acting through their representatives, selected in accordance with the provisions of this title, to establish a board of adjustment of jurisdiction not exceeding the jurisdiction which may be lawfully exercised by system, group, or regional boards of adjustment, under the authority of section 3, Title I, of this Act.

Such boards of adjustment may be established by agreement between employees and carriers either on any individual carrier, or system, or group of carriers by air and any class or classes of its or their employees; or pending the establishment of a permanent National Board of Adjustment as hereinafter provided. Nothing in this Act shall prevent said carriers by air, or any class or classes of their employees, both acting through their representatives selected in accordance with provisions of this title, from mutually agreeing to the establishment of a National Board of Adjustment of temporary duration and of similarly limited jurisdiction.